

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11745RWZ

BARBARA DEIGHTON HAUPT, Trustee of
BD REALTY TRUST,

Plaintiff

v.

TOWN OF WAREHAM acting by and
through the BOARD OF SELECTMEN OF
THE TOWN OF WAREHAM, and the
BOARD OF SELECTMEN OF THE TOWN
OF WAREHAM,

Defendants

DEFENDANTS' MOTION *IN LIMINE*
TO EXCLUDE ANY AND ALL
TESTIMONY AND EVIDENCE
CONCERNING TOWN OF
WAREHAM M.G.L. CHAPTER 40B
STATISTICS

Now come the Defendants (the "Town") in the above captioned matter and hereby move, *in limine*, that an order be entered precluding any and all testimony and evidence concerning Town of Wareham M.G.L. Chapter 40B statistics including the Town Board of Appeals chart entitled "40B Projects Approved and Pending" identified in Joint Pretrial Memorandum as Plaintiff's Contested Exhibit 'V.' A true and accurate copy of the chart is attached hereto as Exhibit A. In support of this motion, the Town states as follows.

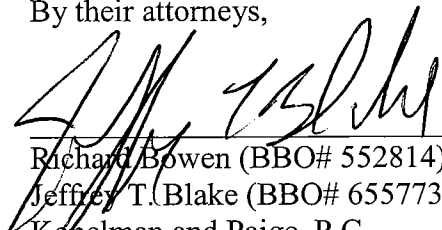
This is a claim by the Plaintiff for damages resulting from the Town's taking of her Property. With respect to the valuation of the Property, Plaintiff contends that the highest and best use of the premises is as a 40-unit condominium development under M.G.L. c. 40B ("Chapter 40B"). Joint Pretrial Memorandum, Plaintiff's Contested Issues of Fact No. 30. Chapter 40B is a state statute which allows local zoning boards of appeals to approve affordable housing developments under flexible rules including the

bypassing of local bylaws and ordinances. In general, Chapter 40B can be utilized by a developer if a town does not meet minimum thresholds of low or moderate income housing. The Town has stipulated to the fact that at the time of the taking the Town had not achieved the applicable thresholds. Joint Pretrial Memorandum Joint Statement of Stipulated Facts No. 24. As the Town is not contesting the general applicability of Chapter 40B at the time of the taking, statistical information on the number of pending and approved Chapter 40B projects in the Town is irrelevant.¹ The Town's stipulation as to not meeting the Chapter 40B threshold makes additional evidence as to the number and percentage of other affordable housing and Chapter 40B projects duplicative and unnecessary. The court should exclude irrelevant and needlessly presented cumulative evidence. F.R.E. Rules 401 and 403.

WHEREFORE, the Town requests that this Court enter an order precluding the Plaintiffs from offering testimony concerning Chapter 40B statistics including the Town Board of Appeals chart entitled "40B Projects Approved and Pending" identified in Joint Pretrial Memorandum as Plaintiff's Contested Exhibit 'V'.

Defendants,

By their attorneys,


 Richard Bowen (BBO# 552814)
 Jeffrey T. Blake (BBO# 655773)
 Kopelman and Paige, P.C.
 101 Arch Street
 Boston, MA 02110-1109
 (617) 556-0007

308137/3100/0224

¹ The Town is however contesting the ability of a Chapter 40B project to comply with federal and state environmental and wetlands regulations as they apply to this site.

**TOWN OF WAREHAM ZONING BOARD OF APPEALS
40B PROJECTS APPROVED AND PENDING**

Petition	Street Address	Developer	Mailing address	contact person	Telephone	Total Units	40B Units	Disposition
24-03	"Cromesett Landing" Camardo Drive	Wanco Managmnt	Mattapoisett Wareham Housing	Watie Akins	508-295-8031	36 Single Fam 2 bdrm	9 Lottery	granted 1/16/04 compre permit
48-02	Swifts Beach Road	Champion Builders	300 Oak St Pembroke, MA	Matt Dacey	781-826-3800	6 Single Fam 2 bdrm	2 Lottery	granted 2/21/03 compre permit
14-04	425 Main Street	Champion Builders	600 Oak St Pembroke	Matt Dacey	781-826-3800	8 - 2/4 Unit Townhouses	2 55+ Lottery	granted 8/10/04 compre permit
13-04	68 Fearing Hill Road	Champion Builders	600 Oak ST Pembroke	Matt Dacey	781-826-3800	7- 2 bdrm free standing units	2 Lottery	granted 8/10/04 compre permit
30-03	Carleton Place Locust Street	Carleton Street LLC Pacor	110 Hedges Pond Rd Plymouth	Pat Mulligan Atty Devin	781-982-2400	40 duplex/ quadplex 3 bdrm	10 Lottery	granted 3/11/04 compre permit
15-99	Avenue A Oakdale Heights	Access Partners Dev	49 Locust St Falmouth	John Druley		16 Single Fam	4 Lottery	granted 07/14/99
002-05	Brown Street	Rock Marsh LLC Pacor	110 Hodges Pond Rd Plymouth	Atty Devin	781-982-2400	40 2 bdrm duplex	10 40+ restrict	continued 5/25/2005
003-04	Onset Avenue The Fairways at Bay Pointe Country Club	Onset Partners LLC	110 Hodges Pond Rd Plymouth	Bob Gunnarson Atty Devin	508-759-8803 781-982-2400	114 quadplex	29	continued 4/27/2005
001-05	2701 Cranberry Hwy Cranberry Court "Agawam Green"	Cranberry Court LLC	PO Box 311 Amesbury	Micheal Shane Lyman Louis	978-375-3727	48 -1&2 bdrm Single Fam	14 Lottery	continued 3/9/2005
53-03	Hunter Avenue Hunter Estates	Conerstone Prop	7 Herring Pond Rd Plymouth	Brian Hupp		12 Single Family	5	In denied/appeal 4/12/2004